

UNITED STATES PATENT AND TRADEMARK OFFICE

MAILED

AUG 25 2003

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte WAYNE K. DUNSHEE and MARY L. BROWN

Application No. 09/577,551

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on August 14, 2003. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

On August 26, 2002, appellants filed an amendment cancelling claims 34 and 38, and amending claims 11, 16, 25, 35, 37 and 39 (Paper No. 9). The examiner notified appellants in an Advisory Action mailed on September 17, 2002 (Paper No. 10) that the amendment (Paper No. 9) would be entered. Subsequently, on December 23, 2002, appellants filed an Appeal Brief (Paper No. 13). Appellants indicate on page 2 of their Brief that

Application No. 09/577,551

claims 11-13, 16-33, 35-37, 39-45 and 49-52 are pending and, therefore, are being rejected as obvious under 35 U.S.C. § 103. Moreover, in the Examiner's Answer mailed on March 27, 2003 (Paper No. 14), the examiner states on page 2, section (3) that the "statement of the status of the claims contained in the brief is correct" and that "[t]he copy of the appealed claims contained in the Appendix to the brief is correct" (page 3 of Examiner's Answer, section (8)). However, on page 3, section (10) of the Examiner's Answer, the examiner states that "[c]laims 11-13, 16-45 and 49-52 are rejected under 35 U.S.C. § 103." It is not clear from the record whether the examiner maintains the rejection of claims 34 and 38, or if the examiner inadvertently included claims 34 and 38 in his ground of rejection.

Accordingly, it is

ORDERED that the application is returned to the examiner for clarification of the grounds of rejection in the Examiner's Answer mailed March 27, 2003 (Paper No. 14), notification to appellants in writing, and for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By: 

KIMBERLY JORDAN  
Program and Resource Administrator  
(703) 308-9797

Application No. 09/577,551

cc: Office of Intellectual Property Counsel  
3M Innovative Properties Co.  
P.O. Box 33427  
St. Paul, MN 55133-3427

KJ/clm/dm  
RA03-0498